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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
EUREKA-MCKINLEYVILLE DIVISION

CALEB HALEY, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

ALBERTSONS COMPANIES, INC., a foreign
corporation, and SAFEWAY, INC., a domestic
corporation,

Defendants.

Case No. 3:23-cv-02811-TLT

**STIPULATION AND ~~PROPOSED~~
ORDER REGARDING THE
PARTIES' LIMITED AGREEMENT
TO ARBITRATE ISSUES
CONCERNING THE SCOPE OF
THE ALLEGED AGREEMENT TO
ARBITRATE AS MODIFIED**

WHEREAS, on June 7, 2023, Plaintiff Caleb Haley commenced this action (the
“Action”) by filing a Class Action Complaint (Dkt. No. 1), asserting claims against Defendants
Albertsons Companies, Inc. and Safeway Inc. (together, “Defendants”) under the California
consumer protection laws, on behalf of himself and a proposed class;

WHEREAS, Defendants have advised Plaintiff of the grounds on which they intend to
file a motion to compel arbitration;

WHEREAS, Defendants assert that Plaintiff and Defendants are parties to a contract,
containing a provision (paragraph 24, the “Arbitration Clause”) in which Plaintiff and
Defendants purportedly agreed to arbitrate certain disputes;

STIPULATION AND ~~PROPOSED~~ ORDER REGARDING
THE PARTIES' LIMITED AGREEMENT TO ARBITRATE
ISSUES CONCERNING THE SCOPE OF THE ALLEGED
AGREEMENT TO ARBITRATE - 1

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1 **WHEREAS**, Defendants further assert that the Arbitration Clause contains a delegation
2 provision by which Plaintiff and Defendants purportedly agreed that any disputes concerning
3 the scope of the Arbitration Clause would be decided by an arbitrator in the first instance;

4 **WHEREAS**, Plaintiff disputes that he entered into a binding agreement to arbitrate any
5 disputes he may have or had with Defendants and disputes that the Arbitration Clause
6 Defendants intend to enforce contains a delegation provision;

7 **WHEREAS**, Plaintiff further disputes that the scope of the Arbitration Clause would
8 encompass the subject matter of this Action, even if such an enforceable arbitration agreement
9 exists; and

10 **WHEREAS**, notwithstanding the foregoing, Plaintiff has nevertheless agreed to
11 consent to confidential arbitration for the limited and sole purpose of determining whether the
12 claims asserted in this Action fall within the scope of the Arbitration Clause;

13 **NOW, THEREFORE**, Plaintiff and Defendants (the “Parties”) jointly stipulate and
14 agree as follows, subject to the Court’s approval:

15 1. The Recitals are incorporated herein by reference to the same extent and with the
16 same force and effect as if fully set forth herein.

17 2. Plaintiff consents to arbitration under the terms set forth in the Arbitration Clause
18 solely and exclusively for the limited purpose of determining the threshold issue of
19 arbitrability—*i.e.*, whether the claims at issue in this Action fall within the scope of the
20 Arbitration Clause. If the arbitrator determines that the claims at issue in this Action fall within
21 the scope of the Arbitration Clause, Plaintiff agrees that he must arbitrate those claims according
22 to the terms of the Arbitration Clause and the Terms of Use.

23 3. In an effort to further streamline proceedings and promote judicial economy, the
24 Parties agree to produce certain documents and information (as specified in Schedule A hereto)
25 within 30 days of the service on Defendants of an arbitration demand by Plaintiff.

26 4. The Parties agree that the arbitration will be kept confidential except that they
27 may disclose to this Court whether the arbitrator concludes that the claims at issue in this Action

STIPULATION AND ~~PROPOSED~~ ORDER REGARDING
THE PARTIES’ LIMITED AGREEMENT TO ARBITRATE
ISSUES CONCERNING THE SCOPE OF THE ALLEGED
AGREEMENT TO ARBITRATE - 2

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1 fall within or outside the scope of the Arbitration Clause. Nothing in this stipulation precludes
2 either party from moving in this Court for entry of an order enforcing an arbitrator's award or
3 ruling under 9 U.S.C. § 9.

4 5. The Parties respectfully request that the Court stay this Action pending the
5 outcome of the arbitration proceeding described above and that this Court retain jurisdiction, as
6 necessary, pending the outcome of such arbitration proceeding.

7 6. The Parties further agree to submit joint status reports to the Court every 30 days
8 until the stay described above is lifted. The first such status report shall be due on October 2,
9 2023.

10 7. The Parties further agree that this Stipulation is without prejudice to any dismissal
11 arguments under Federal Rules of Civil Procedure 9(b), 12(b)(1) and 12(b)(6) and that
12 Defendants may raise those arguments after the arbitrator rules on the threshold issue of
13 arbitrability—*i.e.*, whether the claims at issue in this Action fall within the scope of the
14 Arbitration Clause.

15 This Stipulation may be signed in counterparts. A facsimile, PDF, or electronic signature
16 on this Stipulation shall have the same force and effect as an original signature.

1 **SCHEDULE A**

2 **For Production by Defendants**

3 1. All non-privileged documents reviewed by Kevin Michael or Defendants'
4 counsel in connection with preparation of his draft declaration in this matter provided to
5 Plaintiff's counsel on July 27, 2023 ("Draft Declaration"), including but not limited to the
6 documents constituting "ACI's records," as that phrase is used in Paragraph 9 of the Draft
7 Declaration.

8 2. A copy of the contractual terms that relate to Mr. Haley's Club Card account, to
9 the "predecessor Safeway Card No. 41035708166," or to any Club Card account associated
10 with the Household ID No. 990003116405, as available, and as described in paragraph 9 of the
11 Draft Declaration.

12 3. All documents reflecting any purchases made by Mr. Haley in his capacity as a
13 visitor to, or a user of, any "Site," as that term is defined in the "Terms of Use" attached as
14 Exhibit A to the Draft Declaration and identifiable by reference to (a) Mr. Haley's Safeway
15 and/or Albertsons Companies, Inc. account information or (b) other information specific to Mr.
16 Haley (e.g., credit card, email address, etc.).

17 **For Production by Plaintiff**

18 4. All documents within Mr. Haley's custody, possession, or control related to his
19 Safeway Club Card and/or Safeway for U accounts, purchases he made using a Safeway Club
20 Card and/or Safeway for U account, and his download and/or use of the Safeway mobile app
21 (the application Safeway makes available to customers for download and use on a mobile
22 device).

1 RESPECTFULLY SUBMITTED AND DATED this 8th day of August, 2023.

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3 TERRELL MARSHALL LAW GROUP PLLC

4 By: /s/ Beth E. Terrell

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Attorneys for Defendants

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ORDER

IT IS SO ORDERED. This matter is STAYED pending the outcome of arbitration. The parties shall provide status reports every 30 days to the Court regarding the arbitration with the first status report due ~~October 2~~ ^{September 14}, 2023. The Clerk shall ADMINISTRATIVELY CLOSE the case subject to reopening upon completion of arbitration. If the arbitrator determines that the claims at issue in this Action fall outside the scope of the Arbitration Clause and are not required to be arbitrated under the Arbitration Clause and Terms of Use, Defendants may within 30 days of the arbitrator's determination make in this Court any arguments they may have under Federal Rules of Civil Procedure 9(b), 12(b)(1) and 12(b)(6).

DATED this 10th day of August, 2023.



THE HONORABLE TRINA L. THOMPSON